THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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W.P.No.17582 OF 1996

DATED: 17.01.2007

Between:

P.V.S. Maheswara Rao …
Petitioner

AND

The Managing Director,
APCO, Hyderabad,
The APSHWCS Ltd., (APCO),
3-5-770, Weavers Bhavan,
Narayanaguda, Hyderabad-29 …Respondent

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.17582 of 1996

ORDER:

Seeking a Mandamus to declare the proceedings of the respondent dated 07.08.1996 as arbitrary, illegal and malafide and to direct the respondent to convert his services as a Typist forthwith by duly placing him in a higher scale or in the alternative to direct the respondent to provide promotional avenue to him with effect from the date on which he has been stagnating in the present post, this writ petition is filed.

The petitioner joined APCO in the year 1978 and his services were confirmed on 22.10.1980. He worked as an Assistant Sales Man till 12.04.1993. Thereafter, he was transferred to the Divisional Marketing Office, Visakhapatnam wherein he worked as a Typist continuously from 13.04.1993. The Head Office called for particulars of the employees working in the post of typist for the purpose of conversion. Since the petitioner possessed the qualifications of Typewriting High Grade (English) and Typewriting Lower Grade (Telugu), the Divisional Marketing Office, Visakhapatnam is said to have recommended his case for conversion. The petitioner was transferred to Narsipatnam from Visakhapatnam on 20th June, 1996 as an Assistant Sales Man. Aggrieved thereby, he filed W.P.No.12252 of 1996 before this Court. This Court, by order dated 27.06.1996, directed the respondent to decide the matter regarding conversion of his designation expeditiously. The respondent, *vide* the impugned order dated 07.08.1996, rejected the petitioner's request for conversion holding that inter-wing conversion could not be claimed as a matter of

right by an employee, transfer from one wing to another could be considered in the same cadre and scale of pay and that such request for inter-wing transfers would be considered by Management with reference to the suitability of a person for the post on the merits of each case. The respondent rejected the petitioner's request for conversion or change of designation on the ground that the post held by the petitioner was not equivalent to that of typist.

The petitioner would contend that in the circular dated 16.04.1994, whereby applications were invited for conversion, no modalities were prescribed regarding the eligibility criteria and, therefore, Assistant Sales Men were eligible to seek conversion. The petitioner would refer to the case of three other employees, who were converted from the category of Assistant Sales Man to that of Typist in the year 1987 and in the year 1994. The petitioner would plead discrimination. He would also contend that the respondent is required to provide for a channel of promotion in order to avoid stagnation of employees and as there were several vacancies of typists available in the respondent organisation, and services of typists are being extracted on daily wage basis though qualified candidates are available in the department, the petitioner ought to have been considered and appointed as a typist.

In its counter-affidavit the respondent would submit that the substantive post of the petitioner is that of an Assistant Sales Man, that the scales of pay of the Assistant Salesman and that of Typist are different and, while the petitioner's services may have been utilised for some time in the absence of a typist or when the typist had gone on leave in the office of the DMO, this was only a temporary administrative

arrangement and did not entitle him to claim that he was transferred and posted as a typist. The respondent would submit that there is no method of recruitment to the post of typist by transfer from Assistant Sales Man, that there was no parity either in the nature of duties or in the scale of pay of Assistant Sales Man and that of a typist, and that, in accordance with the directions of this Court in W.P.No.12252 of 1996, the petitioner's case was considered and his request for being appointed as a typist was rejected as the post of typist and that of Assistant Sales Man were in two different categories. Respondent would submit that no action was taken pursuant to the circular issued in April, 1994, and that the three persons, whose names were mentioned in the affidavit, were appointed by transfer in 1987 but not in 1994 as they are fully qualified for the post of typists. Respondent would submit that since the petitioner himself came forward voluntarily to work as a typist, it was not open to him to contend that he should be converted as a typist or that he was entitled to claim parity.

It is well settled that appointment to any post has to be made in accordance with the rules applicable and in the absence of any rule, providing for appointment to the post of typist by transfer from the post of Assistant Sales Man, no right accrues in favour of the petitioner to claim that he should be appointed by transfer to the post of typist. The mere fact that he worked for a short duration as a typist would not entitle him to claim that he should be appointed by transfer as a typist when the rules do not provide for such a manner of appointment.

The plea of discrimination must also fail. The petitioner cannot compare his case with the employees who were appointed by transfer as a typist in the year 1987. As has been held by the Supreme Court,

in **CHANDIGARH ADMINISTRATION v. JAGJIT SINGH**[1], even if the other appointment has been made contrary to the rules, it is not open to an employee to claim that such an illegality should be perpetuated. The mere fact that some employees were appointed by transfer as typists in the year 1987 would not entitle the petitioner to make a similar claim when it is not in dispute that the rules do not provide for appointment to the post of typist by transfer from the post of the Assistant Sales Man.

There is considerable force in the submission of the petitioner that no employee should be permitted to stagnate in service and that the respondent ought to provide for a channel of promotion. However no mandamus can be issued in this regard. The respondent shall consider the feasibility of providing appropriate channels of promotion for its employees in order to avoid stagnation in service and take necessary action in this regard.

The writ petition fails and is accordingly dismissed. No order as to costs.

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RAMESH RANGANATHAN,J

Date:17.01.2007
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.17582 of 1996

Dated: 17.01.2007

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[1] AIR 1995 SC 705